No. 07-1510

In The

FILED
SEP 25 2008
CLERK
U.S.

Supreme Court of the United States

Denise Dehning,

Petitioner,

v.

Child Development Services
of Fremont County, et al.,

Respondents.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

REPLY TO BRIEF IN OPPOSITION

Denise Dehning
Appearing Pro Se
235 River Place
Lander, WY 82520
307.335.5066

Dehning's Petition for Certiorari, though it omits many provable, titillating details, might well double as a "This Story is True" movie proposal. The record supports every detail and much more. This Court is the final arbiter of the judicial branch of the United States government, and Dehning implores it to grant her the justice she has been shamefully denied. The Court of final resort is the people. Dehning's resolve is implacable. The saga of her struggle includes all elements of superlative story, and if necessary, she will find a way to see it told.

For four years Dehning has been battling illegal, unethical, unjust, and/or incompetent acts, from defendant CDS, to the Wyoming Fair Employment Protection Agency (WFEPA), to the Equal Employment Opportunities Commission (EEOC), to the federal district court, to the federal appellate court.

CDS' Brief in Opposition is fraught with error and misstatement of the record. CDS director Al McCelland did <u>not</u> suggest that Dehning file a grievance. McClelland, unknown to Dehning, had been alerted by Dehning's supervisor that Dehning would be coming to him and thought to end the matter summarily. Dismissive, impatient, and patronizing, he remarked that Dehning had not filed a grievance, implying that her complaint was not serious. (The CDS sexual harassment policy made no provision for grievance.) He later filed a provably fraudulent memo to exonerate himself for his illegal failure to entertain Dehning's complaint. (v. 1, doc. 33 at 2 – 5; v. 2 at 24).

Dehning did not file a charge of discrimination with the EEOC for sexual harassment on July 15, 2004. Sexual harassment is not at issue in this case and has never been. Dehning's in-house harassment grievance was never decided and therefore could not be appealed. (The CDS Board nullified McClelland's decision on the grievance and instructed him to reopen the matter; he failed to make further findings.) (v. 1, doc. 33 at 5 – 7; v. 2 at 17).

Dehning did not file a complaint with the EEOC, as CDS states, but with the WFEPA, on June 24, 2004, not, as CDS states, on July 15, 2004. She complained to the WFEPA of discrimination based on the adverse employment actions she suffered from reporting harassment, not for "unwelcome sexual harassment," as CDS states. The WFEPA ignored nine (9) of the ten (10) pages of Dehning's supplemental information document and prepared a sexual harassment charge, over which it had no jurisdiction, thereafter advising Dehning that the case had been passed to the EEOC, but assuring her that the EEOC would "look at everything" and "investigate thoroughly." (v. 1, doc. 33 at 7; v. 2 at 17, 18;). The WFEPA could and should have prepared a charge based on the information before it and could and should have advised the EEOC of its mistake.

The EEOC (1) did not serve the charge within the ten (10) days mandated by Title VII (42 U.S.C. §2000e-5 [Title VII §706(b)]), (2) did not notice that neither it nor the WFEPA had no jurisdiction over harassment (did not read the file, including a seventeen (17)-page document Dehning

filed, (3) did not whatsoever investigate the retaliation that caused Dehning to seek help, (4) did not allow Dehning – a meek, submissive-seeming person – to raise the retaliation, and (5) itself retaliated against Dehning the day it received the third letter from the Wyoming congresswoman on Dehning's behalf by dismissing the (apparent) charge of sexual harassment wrongly and incompetently prepared by the WFEPA. (v. 1, doc. 33 at 9- 11). Again, Dehning filed her complaint because of adverse employment actions, and the EEOC had no jurisdiction to entertain or rule on a charge of sexual harassment. The EEOC is responsible for understanding the charges before it and here did not. The EEOC could and should have served the actual charge Dehning had filed with the legally-mandated ten (10) days, alerting CDS that a watchdog agency was at work.

(Presumably, the EEOC dismissed the first charge – retaliation following a report of harassment – and has subsequently ignored the questions of all Wyoming's United States congresspeople and Vice President Cheney's office, because it intended to issue a Right to Sue letter on the second charge – retaliatory failure to rehire – and wanted to cover up its failure to serve notice of the first charge within the 10 days required by 42 U.S.C.§2000e-5 ([Title VII §706(b)]) and its failure to return her phone calls. This failure had grave consequences, as CDS would surely have rehired Dehning had it known she had complained to a protective agency. By pretending that retaliation did not occur until the time of the second charge,

the EEOC appears to be hoping to sweep the initial, different retaliation under the rug.)

Instead, unaware that Dehning had taken steps to protect herself, CDS hired multiple personnel to handle Dehning's caseload and falsely advised her that it had no use for the services she provided. Dehning filed a second charge with the WFEPA for retaliation based on failure to rehire. The WFEPA again passed the charge to the EEOC. (v. 1, doc. 33 at 10; v. 2 at 20, 22).

The EEOC dismissed the erroneous charge of sexual harassment on the grounds that "the harassment stopped." (v. 1, doc. 33 at 11). The EEOC's failure to serve the charge within the legally required ten (10) days was a violation of federal law and its own policy and was a dereliction of its duty to understand the charge before it, notwithstanding the WFEPA's egregious error. Dehning's supplemental documents were single-spaced, narrow-margined, and long. The inference that they were unread, by either the WFEPA or the EEOC, is inescapable. The documents describe retaliation. (v. 2 at 17, 29).

Entitled by law to an investigation of her complaint of adverse employment actions following her report of harassment, Dehning continues to the present day her effort to force the EEOC to reopen this case.

Insisting on dragging the red herring of sexual harassment across the facts, CDS devotes pages of its brief to excerpts from an EEOC letter to Dehning explaining why her "charge of sexual harassment" had been dismissed. (The EEOC letter misstates the facts in any event.) (v. 2 at 17,

29). Again, sexual harassment could not be appealed, could not be litigated, could not be mediated. Whatever the subsequent misunderstanding of the mediator or the district judge or the 10th Circuit, sexual harassment was not at issue. CDS retains jurisdiction to this day.

CDS confuses Dehning's first and second charges, mistakenly stating that on September 8, 2004, Dehning filed a second charge of discrimination with the EEOC (she filed the charge with the WFEPA) "for having reported the allegation of sexual harassment to her employer" – the clearly-stated basis of her first charge, though neither agency grasped the facts. (v. 2 at 17).

Still intent on obfuscating the issues, CDS states that Dehning filed suit alleging sexual harassment and retaliation. The Complaint, written by Dehning's then-attorney Donald Rissler, states as its cause of action the single allegation of retaliation based on failure to rehire. (v. 1, doc. 1).

CDS states that Dehning approved her Mediation Statement. Dehning did <u>not</u> approve the Statement, was not allowed to approve it. She read a garbled first version, reasonably assumed that the references to sexual harassment were to show that the charge was based on harassment rather than race, religion, age, etc. and wrote changes in the margins and on post-it notes. The changes did not appear in the final Statement. (v. 1, doc. 33 at 22 – 23; v. 2 at 61, 62).

CDS alleges that Dehning agreed to all terms of the settlement agreement. Though she had not been advised, by Rissler or the mediator, that agreement meant the release of the charge she

was independently pursuing, she did agree to the essential terms of the settlement. (v. 1, doc. 33 at 16 – 17, 24 – 25; v. 2 at 56).

Integral to the settlement, and not performable within a year, was Dehning's independent employment contract, negotiated because Dehning refused to be supervised by her former supervisor or the CDS director. Her employment was otherwise to remain the same. (v. 1, doc. 33 at 24; v. 2 at 66).

Rissler presented Dehning with a settlement agreement that released the charge she was independently pursuing, released prospective claims, and omitted altogether mention of her independent employment contract. (v. 2 at 67). The contract provided by CDS called for increased supervision by her supervisor and the CDS director, gave CDS control of her hours, and reduced the scope of her practice. (v. 2 at 68).

Dehning refused to sign. She asked for copies to read at home. Rissler, a large man, said, "No. It's over. You do not have a choice. You are not leaving this office without signing these papers." Dehning wept. Rissler relented, and she left with copies, resolved to never return. (v. 1, doc. 33 at 25 – 27).

Rissler asked CDS to revise the contract. CDS did. The revised contract, on its face, cures none of the variances from the agreement and reinforces one. (v. 1, doc. 33 at 26 – 28; v. 2 at 74).

The facts of the farcical hearing in federal court, the CDS failure to notice witnesses, the judge's announcement of his decision before the introduction of evidence, are in the record. (v. 1,

doc. 39). So, too, does the record lead to the sad and shocking, inescapable inference that the 10th Circuit decided the outcome without reading the record and instructed its clerks to support its decision. (doc. 2034815, doc. 204606, doc. 9540731, doc. 9546945, doc. 9550566) (To this date, Dehning has never received a copy of the 10th Circuit's opinion, as required by law.) (28 U.S.C. Appendix – FRAP 36(b)).

Dehning's legal argument is in her Petition for Certiorari and in various documents in the record. Dehning prays this august Court to carefully review the record and at last grant her justice.